

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

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THE PROCTER & GAMBLE COMPANY,

Plaintiff,

v.

THE COCA-COLA COMPANY,

Defendant.

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CIVIL ACTION NO. C-1-02-393

Hon. Walter Herbert Rice

Hon. Sharon L. Ovington (Magistrate)

**THE COCA-COLA COMPANY'S MOTION FOR ENLARGEMENT OF TIME TO  
RESPOND TO THE PROCTER & GAMBLE COMPANY'S MOTION FOR PARTIAL  
SUMMARY JUDGMENT ON THE COCA-COLA COMPANY'S DEFENSE OF  
EQUITABLE ESTOPPEL**

The Coca-Cola Company ("Coca-Cola"), through counsel, respectfully moves for an enlargement of time to respond to The Procter & Gamble Company's ("P&G") Motion for Partial Summary Judgment on The Coca-Cola Company's Defense of Equitable Estoppel. Pursuant to the Local Rules, counsel for Coca-Cola have met and conferred with counsel for P&G and believe that P&G will oppose this Motion. A Proposed Order is attached.

On July 27, 2004, the previous deadline for filing motions for summary judgment, the parties agreed to file a Joint Motion to reschedule this deadline. *See* Docket No. 77. As grounds for this Joint Motion, the parties agreed that:

Because any summary judgment motion that the parties may file is contingent on this Court's claim construction decision, the parties respectfully request that the Court reschedule the present due date to 30 days following the issuance of the Court's decision on claim construction. The parties further request that all subsequent case deadlines be adjusted accordingly. Restructuring the schedule in this manner will serve to more efficiently utilize the resources of both the Court and the parties.

*Id.* at 1 (emphasis added). On July 29, 2004, the Court granted the Joint Motion. *See* Docket No. 78. As a result, the due date for filing motions for summary judgment is currently 30 days following the issuance of the Court's claim construction decision.

Coca-Cola respectfully submits that while P&G was not precluded from filing its motion, the timing of its filing is premature. As the parties both previously explained to the Court, any motion for summary judgment, including P&G's motion for partial summary judgment on the issue of equitable estoppel, may be obviated by the Court's decision on claim construction of the same patent at issue in P&G's motion. Accordingly, Coca-Cola respectfully requests an Order extending the deadline for responding to P&G's motion until 30 days following the issuance of the Court's decision on claim construction or in the alternative until April 20, 2005. Doing so will preserve the resources of not only the parties, but the Court as well. In the event the Court decides to deny this Motion, Coca-Cola respectfully requests that the Court extend the due date for responding to P&G's motion for partial summary judgment until 21 days after the date of its Order.

Dated: January 20, 2005

Respectfully submitted,

THE COCA-COLA COMPANY

By s/Roger J. Makley

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 20, 2005, a copy of the foregoing THE COCA-COLA COMPANY'S MOTION FOR ENLARGEMENT OF TIME TO RESPOND TO THE PROCTER & GAMBLE COMPANY'S MOTION FOR PARTIAL SUMMARY JUDGMENT ON THE COCA-COLA COMPANY'S DEFENSE OF EQUITABLE ESTOPPEL was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's CM/ECF and copies will be mailed via U.S. Mail to those parties to whom electronic notice has not been sent. Parties may access the filing through the Court's system.

s/ Roger J. Makley  
Roger J. Makley

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